July 11, 2016 VIA Electronic Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

RE: Notice of Ex Parte Presentation, CG Docket No. 02-278

Dear Ms. Dortch:

On July 7, 2016, the National Council of Higher Education Resources (NCHER) had a meeting with David Grossman of Commissioner's Mignon Clyburn's office and, on July 11, 2016, we had a telephonic meeting with Nicholas Degani of Commissioner Ajit Pai's office. In both meetings, we discussed comments filed with respect to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking (NPRM) released May 6, 2016 that implements provisions contained in Section 301 of the Bipartisan Budget Act of 2015, which amended the Telephone Consumer Protection Act (TCPA) to explicitly authorize the use of auto-dialer technology to collect debts owed to or guaranteed by the United States.

NCHER is a national, nonprofit trade association that represents higher education service agencies that administer education programs that make grant and loan assistance available to students and parents to pay for the costs of postsecondary education. Our membership includes organizations under contract with the U.S. Department of Education to service and recover outstanding loans made under the Federal Direct Loan Program and organizations that service and recover outstanding loans made under the Federal Family Education Loan Program (FFELP). All of these state, nonprofit, and for-profit organizations are impacted by the proposals contained in the NPRM on the use of auto-dialer technology to collect debts owed to or guaranteed by the United States.

NCHER staff and representation in attendance for the meeting with Mr. Grossman included:

- James Bergeron, President
- Sean Deverey, Vice President, Government Relations
- Sheldon Repp, Senior Advisor
- Alex Nock, Penn Hill Group, on behalf of NCHER

James Bergeron, Sean Deverey, and Sheldon Repp were on the call with Mr. Degani, as was Tim Fitzgibbon, Senior Vice President at NCHER.

Generally, NCHER discussed the same issues during both meetings. The following is a summary of the major points made during the meetings:

- Due to the unique nature of federal student loans, including the specific benefits that the Congress has made available to help struggling borrowers, we believe a separate set of rules for federal student loans is appropriate.

- The NPRM's three call attempt per month limit is too low. Congress has provided federal student loan servicers and collectors with the tools necessary to help student and parent borrowers that are struggling to make payments on their loans. However, these repayment programs are complex and our members need to talk to the borrowers to explain these opportunities for relief and assist them in staying out of delinquency and default.

- We referred to a July 1, 2016 report from the Bureau of Fiscal Service at the U.S. Department of the Treasury on a pilot program it is conducting designed to provide the Department, specifically, and the federal government, more broadly, with first-hand experience of the efforts necessary to assist defaulted borrowers in repaying their federal student loans. Though the pilot is still ongoing, the report (a copy of which is attached) provided initial findings. The report concluded that defaulted federal student loans differ significantly from other debt managed the Bureau of Fiscal Service and are difficult to resolve. The report stated that, while unique repayment options that have potential value are available to these borrowers, these options present communication challenges. The report explained the difficulty in attempting to initiate a dialogue with borrowers who answered the phone less than 2 percent of the time, and that after a year Treasury employees had spoken with approximately 33 percent of the borrowers.

- NCHER's initial and reply comments reference information from our membership demonstrating that servicers and collectors need a higher number of call attempts and live-calls to reach borrowers and explain the intricacies of the various available options. The Educational Credit Management Corporation's comment letter to the FCC stated that its data shows that *"for delinquent and defaulted federal student loan borrowers, it takes an average of 14.3 attempts to contact a consumer before a right party contact is established. For calls to delinquent, but not yet defaulted federal student loan borrowers, it takes between 8.5 and 21.4 attempts (increasing with the age of the delinquency) to contact a consumer before a right party contact is established. For defaulted loans, it takes an average of approximately 13.1 attempts to contact a consumer before a right party contact is established."* Also, Navient Corporation, in a March 11, 2016 Ex Parte letter, wrote, "*80 percent of Navient's first live contacts with delinquent borrowers only occurred after six or more call attempts (i.e., it reached only 20 percent of the delinquent borrowers with fewer than six call attempts), and more than half of its live contacts with borrowers required more than 15 call attempts (i.e., it reached less than half of the borrowers with fewer than 15 call attempts). For 25 percent of the delinquent borrowers with whom Navient had a live contact, it took 40 or more call attempts to reach the live contact."*[1]

- While NCHER's specific recommendation regarding the number of phone calls is included in our initial and reply comments, we pointed out that the National Consumer Law Center (NCLC), in an Ex Parte letter dated June 6, 2015 [sic] and posted on the FCC's Electronic Comment Filing System on June 12, 2014, recommended that: *"The FCC should limit collection calls to three calls per week, voicemail messages to one per week, and call-backs to once per week unless the consumer gives specific consent at the time of the call."*[2] We pointed out that this recommendation is more permissive than the FCC's proposed rule.

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[1] Letter from Mark Brennan, Counsel to Navient, to Marlene H. Dortch, FCC, CC Docket No. 02-278, at 2-3 (filed Mar. 11, 2016)

[2] June 6, 2015 [sic] Notice of Ex Parte Presentation signed by Margot Saunders, Keith Keogh and Ellen Taverna, posted June 12, 2014, p.12.

- Student loan servicers should not have to wait until a borrower is delinquent before making calls under the exception. In many cases, it is too late to prevent damage to the borrower's credit report. Borrowers need to receive information to help them choose the repayment plan best suited for their unique circumstances well before this time. We noted that NCLC in its comments suggested moving up the trigger date proposed by the FCC to allow calls to borrowers that are "delinquent in meeting recertification requirements for a repayment plan." We appreciate this comment, but suggest that there are other decision points in the life-cycle of a student loan where borrower communication is also critical.

- Trade associations representing institutions of higher education, such as the American Association of Community Colleges (AACC) and the United Negro College Fund (UNCF), support the ability of servicers and collectors to communicate more effectively with student loan borrowers. The AACC specifically said in its comment letter filed with the FCC that "*three call attempts per month is not sufficient to assist borrowers"* and recommends that *"the regulation allow more attempts as borrowers enter late-stage delinquency."* Similarly, the UNCF in its comment letter filed with the FCC points out that repaying federal student debt is a serious problem for African Americans and says that *"Autodialer technology could be useful in reaching borrowers to ensure they are in a repayment plan that is the best fit."* Colleges and universities, especially those that educate a large proportion of low-income and minority students, are likely to have higher cohort default rates if their students do not receive assistance in enrolling in an appropriate repayment plan or managing their student loan debt. Under the Higher Education Act, institutions that have default rates above a certain threshold lose eligibility for all federal student aid, including Pell Grants and Work-Study program funds.

- When asked by Mr. Grossman why student loan servicers and collectors could not just communicate by letter, we indicated that NCHER commissioned an online Google Consumer Survey of current and former college students with student loans that found that the current methods of contact used by federal servicers and collectors to assist student and parent borrowers to stay out of delinquency or default, notably phone calls to landlines and traditional mail, are ineffective means of communication for reaching borrowers and that the increased use of calls to cell phones, text messages, and e-mails are the best means to reach borrowers. A summary of the findings of that survey is attached.

- We expressed our concern that the final rule implementing Section 301 of the Bipartisan Budget Act of 2015 not undercut the ruling made by the FCC in its Declaratory Ruling dated July 5, 2016 that clarifies how the TCPA applies to auto-dialed or prerecorded-artificial-voice calls, including text messages, made by the federal government and its contractors. We pointed out that, for federally-owned student loans, the government uses contractors to service and collect on such loans.

If you have any questions regarding these meetings, please feel free to contact Sean Deverey, NCHER's Vice President of Government Relations, at sdeverey@ncher.us or (202)822-2106.

Sincerely,

James P. Bergeron
President

Attachment

U.S. DEPARTMENT OF THE TREASURY

Treasury Notes

An Update on the Fiscal-Federal Student Aid Pilot for Servicing Defaulted Student Loan Debt

By: David Lebryk 7/1/2016

Today, Treasury's Bureau of the Fiscal Service (Fiscal) is releasing a report on the first year of a its pilot program with the Department of Education's Office of Federal Student Aid (FSA) launched last year to learn more about the way the government collects on defaulted student loans. In a previous post, I shared some initial observations from the pilot, which will conclude in 2017. The report released today includes detail on the results during the first year of the pilot, describes our initial observations from the experience of assisting defaulted student loan borrowers, and suggests recommendations to improve the experience of defaulted student loan borrowers.

During the pilot, FSA referred 16,242 loans owed by 5,729 borrowers with a balance of approximately $80 million to Fiscal. In the first year, Fiscal sent more than 33,000 letters to borrowers and initiated more than 21,000 outbound calls in an attempt to reach borrowers and assist them in resolving the default status of their loans. Based on Fiscal's first-hand experience working with these borrowers, the report discusses the following challenges inherent in the collection processes for all defaulted student loans:

Contacting Borrowers: Speaking with borrowers is critical to helping them enter into a repayment agreement; however, Fiscal was only able to reach approximately 33 percent of borrowers by phone, and borrowers answered less than 2 percent of outbound calls. Borrowers in default may be more willing to take action on their loan if they have clear information about the available options and are contacted using consistent Department of Education branding.

Complexity of Available Repayment Options: The number and complexity of repayment options provide borrowers several alternatives to evaluate to determine the optimal approach for their circumstances. Borrowers are generally unaware of different repayment options and may be ineligible for certain repayment options like rehabilitation and consolidation if they have used these options in the past. Providing more borrower-centric resources, such as clear descriptions of repayment options and a single portal for student loan information, may complement the work of trained call center agents.

Navigating the Rehabilitation Process: Borrowers opting to rehabilitate their loans often have difficulty meeting the program requirements of providing documentation of their income, making nine on-time payments in a period of 10 months, and completing the required paperwork. Simplifying the rehabilitation process and reducing the steps borrowers need to take could potentially ease the burden and increase rehabilitations.

Transition to a Sustainable Repayment Plan Following the Completion of Rehabilitation: Once borrowers complete a loan rehabilitation, they will need to interact with a new servicer and may need to select a repayment plan to maintain affordable payments. Further aligning the monthly payment amounts available to defaulted borrowers with those available to current borrowers may help to reduce borrower confusion and re-defaults.

The pilot has already helped provide insight into many of the challenges in servicing defaulted student loans. The second year of the pilot will continue to allow Fiscal and FSA to gather more data about this process, gain further insights, and identify opportunities to better help borrowers. Fiscal and FSA will continue to explore ways to increase borrower contact and effectively counsel borrowers on how to evaluate and implement the best options for resolving their defaulted student loans. Additionally, for borrowers already enrolled in payment agreements, Fiscal will continue to provide assistance to those borrowers as they complete the program requirements.

The full report on the pilot's first year is available here .

David Lebryk is the Fiscal Assistant Secretary at the U.S. Treasury Department.

Posted in: Student Loan

Report on Initial Observations from the Fiscal-Federal Student Aid Pilot for Servicing Defaulted Student Loan Debt

In February 2015, the Bureau of the Fiscal Service (Fiscal) at the U.S. Department of the Treasury (Treasury) and the Office of Federal Student Aid (FSA) at the U.S. Department of Education (Education) launched a two-year pilot program (pilot) focused on the servicing of defaulted student loans. The pilot has provided Fiscal, and the federal government more broadly, with first-hand exposure to the experience of student loan borrowers in default and the effort to assist them. The pilot is ongoing and while early results are preliminary, this report provides initial findings from the first year; notes the challenges in the servicing of defaulted student loans; and explores what could be potential improvements in the collections process.

I. BACKGROUND

Pursuant to the Debt Collection Improvement Act of 1996 (DCIA), Fiscal collects and resolves delinquent, federal non-tax debts on behalf of most federal agencies. These obligations range from collecting and resolving loans such as home mortgages insured by the Department of Housing and Urban Development and business loans insured by the Small Business Administration to recovering other obligations including fines assessed by enforcement agencies such as the Federal Trade Commission and overpayments by federal agencies. After approximately 30 days of servicing, Fiscal typically refers the debt to one of four private collection agencies (PCAs) that continue collection activity, unless the debtor has agreed to repay the debt in full or enters into another repayment agreement, or initiates administrative wage garnishment (AWG) proceedings.

While federal agencies are required to refer all delinquent, non-tax debts to Treasury for servicing, the DCIA provides Treasury with the ability to exempt particular categories of debt. In 2001, Treasury exercised this exemption authority and exempted FSA's student loan debt from the referral requirement. Accordingly, FSA manages the collection and resolution of delinquent federal student loan debt.

The pilot was designed to give Fiscal first-hand experience in servicing the defaulted federal student loan debt usually collected by FSA through its contracted PCAs or by guaranty agencies that participate in the legacy Federal Family Education Loan program. To do this, FSA referred a small sample of loans from its outstanding defaulted loan portfolio to Fiscal for collection.[1] In total, Fiscal received 16,242 defaulted loans representing 5,729 borrowers. At the time of referral, borrowers have been delinquent on these loans for at least one year. Fiscal followed the processes and guidelines outlined by FSA as if it were a PCA, and trained its employees participating in the pilot and modified its processes in order to handle these loans.[2]

[1] The loans referred in the pilot were at varying stages of default. A segmented assessment of collections practices of loans in different stages of default would require a more targeted loan pool.

[2] FSA provided borrowers with due process prior to the referral of loans to Fiscal. Due process provides borrowers the opportunity to repay, dispute, or otherwise resolve their loans before their loans are referred to Fiscal for collections. Like loans FSA assigns to one of its PCAs, FSA maintains responsibility for reporting to the credit bureaus and referring debts to the Treasury Offset Program and for federal salary offset of debts referred to Fiscal as part of the pilot.

Defaulted student loans, such as those referred in the pilot, differ significantly from other federal debts managed by Fiscal. Typically, federal agencies refer debts to Fiscal for collections by the time they reach 180 days of delinquency. In contrast, student loans are at least 420 days delinquent before they are first referred to PCAs by FSA.[3] Many defaulted student loan loans have been referred to multiple PCAs, and some borrowers may not have ever made a payment on the loan. The loans referred to Fiscal in the pilot have been in default for, on average, six years, and 57 percent of borrowers had already been referred to one or more PCAs prior to their referral to Fiscal. Accordingly, this is a category of federal debt that is very difficult to resolve.

Table A: Pilot Loans by Number of Prior PCA Referrals

Number of Prior PCA referrals	*Number of Borrowers*	*Balance of Loans ($mm)*	*Average Time Since Loan Origination*	*Average Time in Default*
All Loans	5,729	$80.1	10 years	6 years
No prior PCA referrals	2,486	$45.3	5 years	1 year
1 prior referral	524	$7.5	6 years	2 years
2 prior referrals	467	$5.3	7 years	3 years
3-4 prior referrals	744	$6.9	8 years	5 years
5 or more prior referrals	1,508	$15.1	20 years	17 years

There also are several unique loan repayment options available for student loans that borrowers may not be aware of or understand. Most delinquent federal debts are repaid through one of three options: (i) a payment in full of outstanding principal and interest; (ii) a compromise;[4] or (iii) an installment payment agreement for up to 36 months. Student loan borrowers may have additional options including (i) an installment payment agreement of up to 240 months, (ii) consolidation (if loan(s) have not previously been consolidated) and (iii) a loan rehabilitation (if loan(s) have not previously been rehabilitated).[5] Borrowers may ultimately be eligible for repayment options that are based on the borrower's income, and these plans have additional elements that require explanation. These additional options, while of potential value to borrowers, present additional communication challenges.

II. PILOT RESULTS THROUGH FEBRUARY 2016

As noted, Fiscal received a total of 16,242 defaulted loans owed by 5,729 borrowers with a balance of approximately $80 million. The loans were received from FSA in two pools with an initial referral of loans in February 2015 and a second referral at the end of August 2015. This referral process contrasts with FSA's normal process by which PCAs receive a referral of new

[3] The Higher Education Act defines default for federal student loans as loans greater than 270 days delinquent.

[4] Federal agencies generally have authority to enter into compromise agreements with debtors to settle outstanding debt. In a compromise agreement, a debtor agrees to make a lump sum payment for a predetermined dollar amount by a specific date.

[5] Debts also can be resolved via various administrative resolutions. For example, student loan debts can be resolved if they are deemed uncollectible because of disability, death, or incarceration.

defaulted loans each month. FSA randomly selected these loans from defaulted loans that it would have otherwise referred to its PCAs. These loans are generally representative of the composition of the defaulted loan portfolio. On average, each borrower in the pilot has three defaulted loans with a total outstanding balance of approximately $14,000. The total per borrower balance ranges from $500 to over $601,500[6] with a median balance of $7,680.

To facilitate a rough comparison, FSA created a comparably sized group of defaulted loans referred to its PCAs to serve as a control group. Borrowers in this group were selected at random during the same referral periods in which FSA referred loans to Fiscal for the pilot. Table C provides results on certain metrics for the pilot and the control group, but these results do not capture long-term borrower success or qualitative elements such as customer satisfaction.

Table B: Loan Characteristics of Pilot vs. Control Group

	Pilot	*Control Group*
Unique Borrowers	5,729	5,729
Individual Loans[7]	16,242	16,916
Total Loan Amount[7]	$80.1M	$82.9M
Average Borrower Amount	$13,970	$14,462
Median Borrower Amount	$7,680	$7,994
Range of Borrower Amount	$560 - $601,550	$562 - $631,746
Average Prior PCA Referrals	4	4

In the first year of the pilot, Fiscal sent more than 33,000 letters to borrowers and placed more than 21,000 calls in an attempt to initiate a dialogue regarding the borrower's debt. Borrowers answered Fiscal's calls less than 2 percent of the time. Fiscal also answered approximately 3,900 calls initiated by borrowers. By the end of the first year, Fiscal had spoken with approximately 33 percent of the borrowers within Fiscal's defaulted student loan portfolio (i.e., 1,874 unique borrowers). Fiscal received no complaints, either directly from borrowers or through Education, regarding its collection activities during the first year of the pilot.

During this period, the loans of 237 of the 5,729 borrowers serviced by Fiscal (4.14 percent) were resolved by Fiscal and returned to FSA,[8] compared with 313 of the 5,729 borrowers in the

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[6] Defaulted debt balances in the upper part of this range are the result of: i) a higher original loan amount, typically resulting from a parent taking out PLUS loans for multiple children or a student pursuing post-graduate higher education in a specialized field (e.g., medicine, law, etc.) and/or ii) the accumulation of accrued interest and fees (i.e., administrative fees, collection costs, etc.) over an extended period of time while a loan was in default.

[7] Includes additional debts referred to Fiscal in order to keep borrowers' defaulted loans with a single servicer.

[8] Debts are resolved and returned to FSA if the outstanding balance is retired, the borrower rehabilitates or consolidates the loans, or an administrative resolution is completed. Of the loans in the pilot that were returned, 181 borrowers either had their balances fully repaid through the Treasury Offset Program (TOP) collections (108 borrowers) or the borrower consolidated their loans to resolve their default (73 borrowers). Of the remaining resolutions, 31 borrowers voluntarily paid in full or through compromises, eight completed the loan rehabilitation process, and 17 were returned to FSA after Fiscal provided documentation for administrative resolutions.

control group (5.46 percent).

Table C outlines the collection rate (defined as dollars collected divided by the balance of loans referred) and recovery rate (defined as dollars collected plus the value of loans rehabilitated or consolidated divided by the balance of loans referred) for the pilot group and the control group, thus far.

Table C: Collections and Recoveries (Dollars in thousands)[9]

	Pilot	*Control Group*
Collections:		
Rehabilitations (payments received against active rehabilitation agreements and completed agreements)	$18	$36
Administrative wage garnishment	$3	$197
Other voluntary payments (e.g., payment in full)	$160	$340
Collection rate	*0.23%*	*0.69%*
Additional Recoveries:		
Completed rehabilitation loan balances (at time loans returned to FSA)	$127	$2,247
Completed Rehabilitations	8 borrowers	126 borrowers
Recovery rate	*0.38%*	*3.40%*

Fiscal believes that the differences in collection and recovery rates in the first year of the pilot relative to the control group are driven by several factors including timing of the collections cycle, call frequency and related focus on the borrower experience, and different and additional methods that PCAs may be employing for collections. Fiscal has proceeded relatively slowly through the collections cycle in attempt to optimize borrower engagement and voluntary collection efforts. Fiscal postponed using AWG, which allows garnishment of a borrower's wages without a court order, for a majority of borrowers for the first 11 months of the pilot. The delay not only drove the differential in wage garnishment recoveries detailed in the table above, but likely also contributed to decreased activity generally. Since initiating AWG in January 2016, toward the tail end of the first year of the continuing pilot, there has been an increase in the number of borrowers contacting Fiscal to attempt to resolve their loans and end involuntary collections.

In addition, Fiscal called borrowers in the pilot no more than once per week. This level is likely less frequent than the standard practice of PCAs but permitted Fiscal's call center agents to focus on active borrower interactions and follow-up.

PCAs also utilize tools tailored to support student loan collections that Fiscal has not needed in its cross-servicing program and, given the cost and time required to develop such tools, were not deployed in the pilot. These tools include the use of different systems designed to manage the

[9] Data in Table C are based on data from Education's debt collection system.

nine-to-twelve month borrower relationship required to complete the rehabilitation program and customized digital capabilities such as self-service portals.

III. INITIAL PILOT OBSERVATIONS

During the first year of the pilot, Fiscal has observed a number of variables that impact the collection process for defaulted student loans relative to other federal debts. These include: (i) how to contact borrowers who have been in default for many years, (ii) how to explain to these borrowers the available repayment options, (iii) how to help borrowers through the rehabilitation process, (iv) how to transition borrowers to a sustainable repayment plan following the completion of rehabilitation, and (v) how to help borrowers avoid involuntary collection processes such as AWG and the Treasury Offset Program (TOP).

Contacting Borrowers

Fiscal's collections work is generally conducted by U.S. mail and through telephone calls and relies on these methods to initiate borrower contact. In the pilot, student loan borrowers have been difficult to engage using these tools.

In the federal student loan program, borrowers provide their contact information at the time of the loan application and, per the master promissory note and rights and responsibility statement, they are required to update the information throughout the life of their loan. However, Fiscal observed that contact information may not be updated and, as a result, can be outdated when these loans are referred for collection.

During the first year of the pilot, relatively few borrowers responded to Fiscal's outreach.[10] Fiscal spoke with 33 percent of borrowers by phone, with extremely low response rates to outbound calls. Borrowers cannot resolve their loans on their own, except through full repayment of outstanding principal and interest. Therefore, speaking with a call center agent is critical to identifying and enrolling in a repayment option.

Borrowers who spoke with Fiscal were often unaware of, or confused about, their repayment options, which likely contributes to a reluctance to engage with collectors and to the low contact and resolution rates. Many borrowers have appeared unaware that they could make affordable monthly payments based on their income through loan rehabilitation. Borrowers in default may be more willing to take action on their defaulted loan if they have clear information about the available options.

In conversations with Fiscal, borrowers have been confused as to why a third party, in this case Fiscal, is contacting them instead of Education regarding their student loans. Employing consistent Education branding on communications for defaulted borrowers, where possible,[11] could reduce confusion and increase confidence in the legitimacy of the collection activity.

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[10] Prior to contacting borrowers, Fiscal attempted to update contact information with a commercially available database. Few borrowers made direct contact with Fiscal.

[11] The Fair Debt Collection Practices Act requires debt collectors identify themselves by corporate affiliation. Therefore, any deviation from this requirement would require an exception before implementation.

Currently, opportunities for confusion are elevated because, during the stages of delinquency, several different third-party contractors contact the borrower under their own brand names and borrowers may have previously had contact with different contractors such as loan servicers, FSA's defaulted loan servicer, and other PCAs.

Complexity of Available Repayment Options

The number and complexity of repayment options present borrowers with several alternatives from which to determine the optimal approach for their circumstances. Some repayment options appear similar yet confer different benefits to the borrower. For example, rehabilitation and consolidation both allow borrowers to return their loans to current status. Rehabilitation requires at least nine months of on-time payments and requires borrowers to submit paperwork and documentation of income and, in some cases, expenses.[12] By comparison, borrowers who have not previously consolidated their loans can do so without making any payments if they complete the required paperwork and enroll in an income-driven repayment (IDR) plan. Borrowers need to understand the subtle differences in these two options in order to assess what is best for them.

Borrowers' options also vary based on whether they have previously rehabilitated or consolidated their loans, requiring call center agents to understand the history of the defaulted loan before discussing repayment options. As specified in the Higher Education Act, borrowers are only allowed to rehabilitate their loans once, leaving borrowers who re-default with limited options. Re-defaulted loans can only be satisfied through payment in full, a compromise, installment payments, or a consolidation if the loan(s) had not previously been consolidated. It is critical, therefore, that borrowers who pursue rehabilitation understand that it can only be successfully completed once and, as such, may not be the most suitable option for borrowers who may not be able to continue to meet their monthly payment obligations once they return to current status.

This complexity of repayment options is reflected in materially longer call handling times relative to Fiscal's other defaulted debts. In February 2016, the average cross-servicing program call was 5 minutes and 28 seconds whereas the average pilot call was 9 minutes and 4 seconds. In addition, the post-call work time, during which call center agents update the borrower's file and send the borrower any required forms or information, was nearly 4.5 minutes longer for pilot borrowers.

Providing more borrower-centric resources and information may help defaulted borrowers understand and evaluate their options. FSA maintains a separate website for defaulted student loans, but this site is designed for a number of user types (e.g., schools, guaranty agencies, collection agencies), which may contribute to borrower confusion. A more borrower-centered experience might ease navigation and provide borrowers with the information they need. Some changes could include clear descriptions of the available repayment options and a calculator

[12] Borrowers who successfully rehabilitate their loans have the default status reported by FSA removed from their credit report and their remaining collection fees are waived.

similar to those available for non-defaulted borrowers to help them understand their options and estimate their monthly payment.[13]

In addition, defaulted student loan borrowers could benefit from a single portal for information to help determine how much they owe, the repayment options available, and who to contact to address their loan. The portal could include links that clarify which options are available, contact information for their current PCA, and simple online payment forms that allow a borrower to begin or modify a recurring payment. It could also be used to provide borrowers entering into a rehabilitation agreement with timely information regarding their payment obligations and access to forms that could be completed and signed electronically.

Navigating the Rehabilitation Process

Rehabilitation provides an affordable option for most borrowers with monthly payments based on discretionary income, but the first year of the pilot has demonstrated that the rehabilitation process can be difficult to complete. A number of steps are required for borrowers to rehabilitate their defaulted loans: (i) borrowers must submit documentation of their income[14] and Fiscal must verify income information before the monthly payment amount is confirmed and monthly statements are sent to the borrower; (ii) borrowers must make nine on-time payments within a 10-month period;[15] and (iii) borrowers must sign and return a rehabilitation agreement letter.

During the first year of the pilot, 604 borrowers expressed interest in rehabilitating their loans and verbally provided estimated income information; however, borrowers made slow progress toward completing these agreements with only 301 borrowers taking at least one of the additional required actions, such as submitting income documentation or making a payment. Of the 604 borrowers interested in rehabilitating their loans, more than half (374 borrowers) would have been permitted to make the lowest available monthly payment of $5 based on estimated income that the borrowers provided to Fiscal.[16] For borrowers who provided the required documentation to verify their income, the average verified monthly payment amount was just under $75. The average rehabilitation payment received from borrowers to date has been approximately $50.

[13] For example, FSA's website provides clear language about repayment plans offered to non-defaulted borrowers, including a "repayment calculator" and eligibility requirements for each repayment option, to allow borrowers to determine the optimal plan for their circumstances. A second repayment tool allows borrowers with current loans to answer five questions about their circumstances and learn more about potential repayment plans and the steps to enroll in those plans.
[14] The borrower must submit one of the following documents as proof of income: i) a copy of the borrower's most recent federal income tax return (1040) for either of the two previous tax years, ii) an official federal tax transcript (including transcripts provided by the IRS, as authorized by the borrower) for either of the two previous tax years, or iii) a signed Financial Information Statement form listing income and expenses.
[15] Payments must be received 20 days before or after the stated payment due date to be considered on-time.
[16] Many of these borrowers stated that they could not afford a standard rehabilitation payment of 15 percent of their estimated discretionary income and instead sought to pursue a Financial Information Statement (FIS) Rehabilitation that reduces their monthly payment based on documented living expenses such as food, housing, and transportation.

Table D: Borrower Rehabilitation Agreements[17]

Rehabilitation Activity Note: Categories below are not mutually exclusive	*Number of Borrowers*	*Median Balance (dollars in thousands)*
Borrower expressed interest in rehabilitation	604	$10
Verbally agreed to rehabilitation, no additional action taken	303	$9
Provided income documentation	117	$14
Made rehabilitation payments	279	$14
Provided signed rehab agreement letter	42	$17
Completed rehabilitation	8	$18

In November 2015, after noting the navigational challenge confronting borrowers, Fiscal established a single-point-of-contact team to work with borrowers and deliver more extensive and regular interaction. Borrowers who initiate the rehabilitation process are assigned to agents who are familiar with individual borrowers' accounts and status in the rehabilitation program and can provide consistent outreach to remind borrowers to provide any missing information. This team has helped to increase the rate at which borrowers are submitting rehabilitation documentation; Fiscal is monitoring the effect of the single-point-of-contact model as the pilot continues.

Simplifying the rehabilitation process by reducing the steps borrowers need to take could potentially ease the burden and increase rehabilitations. For example, there may be opportunities to streamline the process for borrowers to submit forms and provide the income information necessary for loan rehabilitation, such as allowing borrowers to complete and submit forms electronically. In addition, non-defaulted borrowers can use an IRS data retrieval tool to send their income information to their servicer when enrolling in an IDR plan.[18] However, this tool is not currently available for defaulted borrowers.

Fiscal has also found that many borrowers experience difficulties filling out the Financial Information Statement (FIS) form used for rehabilitations that are based on the borrower's income and monthly expenses. The form requires borrowers to provide monthly expenses for 20 categories and include documentation that borrowers are unlikely to have on hand, such as copies of health insurance premium statements. In addition, the form is used for borrowers who do not have income, are self-employed, are not tax filers, or whose income has changed significantly since filing their taxes. Borrowers without income pursuing a standard rehabilitation payment could benefit from a simplified form that allows documentation of lack of income without also providing extensive documentation of monthly living expenses.

[17] The data in Table D are sourced from Fiscal's debt management system.
[18] The IRS data retrieval tool allows borrowers to electronically request and authorize the transfer of their income information from their federal income tax return to meet the income documentation requirements of IDR plans.

Transitioning Borrowers to a Sustainable Repayment Plan Following the Completion of Rehabilitation

Borrowers face a number of challenges even if they have successfully rehabilitated their loans. Upon completion, FSA transfers the loan(s) from the PCA to a student loan servicer. This transfer usually occurs within a week, but can require up to 60 days if additional processing is required. During this transfer process, borrowers must continue to make monthly payments to the PCA. FSA does not provide rehabilitated borrowers information about which servicer will have their loan until the transfer has already occurred. This lack of clear information during the transition period can cause confusion about where payments should be sent and whom to contact with problems or other questions.[19]

Significantly, borrowers who have rehabilitated their loans have the option of enrolling in an IDR plan with their servicer. However, this option—which could be of considerable benefit to rehabilitated borrowers—requires the borrower to actively choose to enroll in an IDR plan and re-submit income documentation. After the loan is transferred to the servicer, the servicer bills the borrower for the same amount as the rehabilitation payment for up to 90 days in order to allow the borrower to make a repayment selection (and provide required supporting documentation). If the borrower does not successfully enroll in a repayment plan, the loan is automatically entered into a standard payment plan amortized over 10 years, which may result in a significantly higher required monthly payment relative to the payments the borrowers made during rehabilitation. This automated feature could lead to borrowers lapsing back into delinquency and default.

The complexity and confusion are compounded by the fact that the rehabilitation payment options available for defaulted borrowers differ from IDR plans available to borrowers who have rehabilitated their loans or who have never defaulted. The rehabilitation payment amount is based on 15 percent of discretionary income, which is greater than the monthly payment rates currently available to non-defaulted borrowers under Pay As You Earn (PAYE) (10 percent of discretionary income).[20] Defaulted borrowers may lower their monthly payment below 15 percent of discretionary income by entering into a Financial Income Statement rehabilitation (FIS rehabilitation), a rehabilitation in which documented monthly expenses are also taken into account in calculating the monthly payment. However, this option is unique to rehabilitations. In some circumstances a FIS rehabilitation may result in rehabilitation payment amounts less than the 10 percent of discretionary income available in PAYE,[21] and consequently the borrower would face a higher monthly payment after completing rehabilitation.

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[19] To improve communications with rehabilitated borrowers, FSA's list of future enhancements includes functionality to generate a transfer notification to the borrower identifying the non-default servicer that will begin servicing their rehabilitated loan. In addition, FSA is currently considering how to streamline its non-default loan servicing model during the current effort to re-compete and consolidate its non-default loan servicing contracts.

[20] The federal student loan program includes several IDR plans, including PAYE, in which payments are equal to 10 percent of discretionary income, and Income-Based Repayment, in which payments are equal to 15 percent of discretionary income.

[21] This could be the case for a borrower with sufficiently high income and expenses completing a FIS Rehabilitation.

Accordingly, further aligning the monthly payment amounts available to defaulted borrowers with those available to non-defaulted borrowers may help to reduce borrower confusion and re-defaults for borrowers that rehabilitate.[22]

Helping Borrowers Avoid Involuntary Collection Processes such as Administrative Wage Garnishment and the Treasury Offset Program

Fiscal and FSA are required by law to use all available collection tools as appropriate, including AWG. In the cross-servicing program, Fiscal has access to wage and employment information and has found that initiating AWG can lead to higher contact rates.

Fiscal intentionally did not use AWG during the first 11 months of the pilot in order to attempt to engage borrowers and resolve their loans voluntarily. Toward the end of the first year of the pilot, Fiscal began sending garnishment notice letters to borrowers with whom it has been unable to establish a repayment agreement and for whom it has employment information. Fiscal sent notice letters to 1,985 borrowers through the end of February 2016. These letters explained the AWG process and how the borrower could avoid it.

During the pilot, FSA has also submitted borrowers' defaulted loans to TOP, as required by law. TOP centrally collects delinquent debts by withholding certain federal and state payments owed to the defaulted borrower, including tax refund payments.

While it is too early to determine whether these tools substantially increase collections, both collection tools— offsets through TOP and the issuance of AWG notice letters and garnishment orders— resulted in an increase in the daily volume of inbound calls as borrowers called to inquire about tax refunds offset through TOP, ways to avoid AWG, and their available repayment options. The average number of daily inbound calls increased from 13 calls per day during the first 11 months of the pilot to 37 calls per day during February 2016.

Of the 1,985 borrowers who were sent garnishment notices by February 2016, 443 individuals (22 percent) subsequently contacted Fiscal, and 218 individuals (11 percent) entered into a repayment agreement. However, many borrowers did not respond to the garnishment notice and have been or will be subject to wage garnishment. Data regarding the impact of AWG initiation and TOP offsets will continue to be evaluated throughout the remainder of the pilot.

IV. CONCLUSION

The pilot, while incomplete and still in progress, provides government agencies with first-hand experience and insights regarding how to communicate with people who have defaulted on their student loans and how to enhance the federal student loan finance system. In the second year of the pilot, Fiscal will continue working to find ways to increase borrower contact and effectively counsel borrowers on how to evaluate and implement the best options for resolving their defaulted student loans. Additionally, for borrowers in the pilot who already have enrolled in

[22] Altering the terms of repayment options available for defaulted loans may require changes to laws or regulations.

payment agreements, Fiscal will provide assistance as these borrowers complete the program requirements.

The pilot has already helped provide insight into many of the challenges in collecting defaulted student loans and will continue to allow Fiscal and FSA to gather more information about the process, gain further insights, and identify opportunities to better help borrowers and service student loans. Ongoing collaboration will allow the opportunity for Fiscal to share its findings with FSA and assess potential process improvements to determine whether they should be adopted in the collection of federal student loans. Further pilots that engage borrowers who have not yet defaulted also offer the promise of considering potential enhancements to the federal student loan finance system.

To: **Interested Parties**
From: **James P. Bergeron, President**
Date: **February 23, 2016**
RE: **Survey Results on Improving Borrower Communication**

Background

The Bipartisan Budget Act of 2015, signed into law on November 2, 2015, included an important provision amending the Telephone Consumer Protection Act (TCPA) to allow the federal government and its contractors to use predictive dialer technology, through a call, text, or automated message to a borrower's cell phone, to collect a debt owed to or guaranteed by the United States. This change is one of the most important ways to strengthen federal student loan servicing and collections and improve borrower communication, and has long been supported by the Obama Administration, which included the language in each of the last four budgets proposed by the President. The new law requires the Federal Communications Commission (FCC) to issue rules within nine months, which may restrict or limit the frequency and duration of calls to cellular phones. The FCC's Bureau of Consumer and Government Affairs is currently in the process of developing a Notice of Proposed Rulemaking that is expected to be released for public comment later this month; the final regulation must be issued by early August 2016.

In order to better understand the best method of communication for assisting struggling borrowers in repaying their federal student loans as the FCC begins the rulemaking process, the National Council of Higher Education Resources (NCHER) commissioned an online Google Consumer Survey of current and former college students with student loans. The following results are specific to questions asked on the Google survey that address borrower preferences for financial decision-making and the most effective modes of communication.

Survey Results – Top Line Findings

As detailed in the three attachments, **the survey found that the current methods of contact used by federal servicers and collectors to assist student and parent borrowers to stay out of delinquency or default, notably phone calls to landlines and traditional mail, are ineffective means of communication for reaching borrowers. The survey demonstrates that the increased use of calls to cell phones, text messages, and e-mails are the best means to reach borrowers, including struggling borrowers, and that federal policy must adapt to changing borrower demographics and preferences.**

Congress and the Administration should be commended for recognizing that current law needed to be updated to reflect modern technology and current social norms, and that student loan borrowers need timely and accurate information in order to successfully navigate the often-confusing array of student loan repayment options and help in managing their student loan debt. The FCC should strike a balance between appropriate consumer protections and allowing reasonable and responsible use of dialer technology to reach borrowers on their cell phones to provide them with needed assistance. The

Commission must refrain from imposing overly restrictive regulations; this would only serve to undermine the student loan borrower experience and negatively impact the communication between borrowers and servicers.

Survey Results – Detailed Findings

- **78.9 percent of respondents, aged 18-24, reported only owning a cellphone, compared to 3.1 percent of respondents, aged 18-24, who only own a landline.** As a whole, 83.2 percent of all respondents reported owning a cellphone, compared to 27.3 percent who own a landline.

- 43 percent of respondents reported making financial decisions on a computer or tablet, with cell phones and mobile devices ranking second at 26 percent. Younger respondents are 30 percent more likely to use cell phones as their primary method of banking.

- **70.7 percent of respondents selected e-mail, text messages, or cell phone calls as the most effective and primary method of getting information to them.** E-mail, most of which are accessed on a mobile device, ranks as the top method for all borrowers, but younger audiences gravitate much more toward text messages. Unfortunately, under TCPA, a text message is subject to the same restrictions as a cell phone call. **For respondents of all age groups, traditional mail and landline calls rank among the least-selected methods of effective contact.** As noted above, this is the current method employed by federal servicers and collectors because of the restrictions imposed by the TCPA.

- **71.3 percent of all borrowers and 81.4 percent of borrowers, aged 18-24, selected at least one event for which they would like to receive information regarding their student loans,** such as when a payment is due, when a payment is missed, when a payment is posted, and when a loan goes into default. Among the youngest age group, over half selected "when a payment is due" and 68.4 percent selected one or both of "when a payment is due" and "when a payment is missed."

- **74 percent of respondents selected e-mail, text messages, or cell phone calls as the best way to contact them if there was an importance change to their student loans such as going into default or becoming delinquent.** Once again, e-mail ranks as the top method, though 45.8 percent of younger audiences selected a form of mobile communication, either a cell phone call or text. Once again, traditional mail and landline calls is the least preferred method of contact identified by all borrowers. This finding supports the belief that landline usage is dwindling and that consumers do not believe that it is a good way to reach them about their student loans. The Telephone Consumer Protection Act must keep up with current technology and reality of today's consumer preferences.

Background on Survey Methodology

The survey used Google Consumer Surveys, which has conducted extensive validation work both in-house (summary and white paper) and in partnership with Pew Research (comparison and data) to ensure statistical accuracy in their results. Google's surveys were also ranked as the number two overall poll in the 2012 election according to the *New York Times* (article). Major media outlets such as the *New York Times* and *Independent Journal* frequently use Google surveys to complement stories. For example, both "Maiden Names, on the Rise Again" and "If You're Wondering Who "Won" the CNN Debate, We've Got a Chart for You" incorporated surveys within the article and linked directly to the results. Google polling has also been used by Chase Bank, the Wharton School of Business, and Nest Labs, among others. The results are specific to questions asked on the Google survey that address borrower preferences for financial decision-making and the most effective modes of communication.

Background on NCHER

The National Council of Higher Education Resources, or NCHER, is a nonprofit trade association that represents state, nonprofit, and for-profit servicers and collectors involved in the administration of federal education loan programs. Our membership has a long history of assisting borrowers with debts owed to or guaranteed by the federal government by identifying available repayment tools and providing solutions tailored to their individual needs. If you have any questions on NCHER's federal advocacy agenda or the survey results, please contact (202) 822-2106.